REMARKS

The Examiner is thanked for the thorough examination of the present application. This filing is made in response to the Office Action dated January 14, 2010. As presented below, pending claims 1, 4-32 and 34 are believed allowable, with claims 1, 12, 21, 23, 25, 27, 29 and 31 being independent claims.

CLAIMS 1, 4-32 AND 34 ARE ALLOWABLE

Claims 1, 4-8, 10-18, 20-32 and 34 were rejected under 35 U.S.C. § 102 in the Final Office Action dated May 21, 2009 as being anticipated by U.S. Patent Application Publication No. US 2002/0194010 ("Bergler").

The MPEP § 2131 defines the standard for anticipation as follows:

> The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). MPEP § 2131 (emphasis added).

In other words, if there is not identity of terminology, then it is the Examiner's burden to provide adequate support from the reference for a valid equivalency argument. The *prima facie* case of anticipation fails because the Examiner has supplied no objective evidence from the cited reference to support their theory of equivalence for all the recited claim recitations.

Claim 1

Claim 1 recites "a current data token representing the licence for the software product." The applicant submits that Bergler does not disclose a data token representing a licence for the software product.

For example, as noted by the Examiner, Bergler discloses at paragraph [0020] that, "each time the client connects to the terminal server prior to the expiration date of the license, the client is permitted access to the server." OA, pp. 3. However, There is no mention in Bergler of allowing use of a software product only during a use period associated with a current data token representing the licence for the software product.

While the Examiner appears to argue that a data token representing a license is equivalent to a license, such a reading of the claims ignores important claim limitations. Furthermore, the Examiner does not provide any support that the equivalency argument is valid.

It is noted that Bergler discloses, "The license generator 106 prevents the license pack from being copied and installed on multiple license servers 108 through a method of assigning a unique ID to the license pack, associating the ID with a license server 108, digitally signing the license pack, and encrypting the license pack with a license server's public key . . . ." Bergler, [0035]. However, the license pack is not transmitted to the client ("The license server 108 . . . distributes the software licenses contained in the license pack to individual clients . . . ." Bergler, [0036]) and, as discussed below, has no associated use period. Additionally, the disclosed license

pack of Bergler does not meet additional limitations recited in claim 1.

For instance, claim 1 requires "enabling user access to an exchange token, dependent on the current data token supplied by the licence management server, whereby the exchange token can be supplied as a current data token to another said software controller." The Examiner argues such is disclosed at paragraphs [0084] and [0086] Bergler. OA, pp. 5.

However, the Bergler citations do not mention an exchange token. Bergler discloses that if a "same" license has not been issued to a different client, it will be available in the available license pool for updating and issuing to the same client. Bergler, [0086]. Bergler does not disclose that the "same" license is an exchange token.

The Examiner argues that, "[t]he 'same' license being the exchange token and when is being reset and updated being the current data token." OA, pp. 3-4. However, Bergler makes no mention of using either exchange tokens or data tokens. Moreover, the Examiner fails to provide evidence or rational for a theory of such equivalence.

Moreover, Bergler does not disclose a data token representing the licence for the software product having an associated use period. Bergler, as noted in the Office Action, states that the license server assigns a random expiration date to the license. There is no discussion of a data token representing the licence for the software product, much less a data token having an associated use period. Bergler, [0020]. Again, the Examiner fails to provide evidence or rational for a theory of such equivalence.

Similarly, Bergler does not disclose allowing use of a software product substantially only during a use period associated with a current data token. Berger states that if the license server does not have an available license, the client is denied access to the terminal server. Bergler, [0022]. The Examiner has not explained how denying client access to a terminal server if the license server does not have an available license is equivalent to allowing use of a software product substantially only during a use period associated with a current data token.

As all the recitations of the claim were not met, the *prima facie* case of anticipation fails because the identical invention is not shown in as complete detail as is contained in claim 1, as required by MPEP § 2131. Dependent claims 4-11 and 34, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

Claim 4

Claim 4 recites, "A system as claimed in claim 1 wherein the token identifier for a data token comprises that data token." In rejecting claim 4, the Examiner cites paragraph [0064] of Bergler as disclosing this recitation. However, paragraph [0064] fails to mention a token identifier or a data token. Furthermore, the Examiner provides no reasoning why the various elements of paragraph [0064] read on the claimed arrangement.

Claims 12, 21, 23, 25, 27, 29 and 31

Independent claims 12, 21, 23, 25, 27, 29 and 31 recite similar recitations as claim 1. As discussed above, the *prima facie* case of anticipation for these claims fails because the identical invention is not shown in as complete detail as is contained in the claims. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is in condition for allowance and such action is respectfully requested. If any points remain at issue that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should such a fee be required please charge Deposit Account 50-0510 the required fee. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

Respectfully submitted,

Dated: June 12, 2010

/ido tuchman/

Ido Tuchman, Reg. No. 45,924
Law Office of Ido Tuchman
82-70 Beverly Road
Kew Gardens, NY 11415
Telephone (718) 544-1110
Facsimile (718) 374-6092